

EXHIBIT 1



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal - Funding Year 1999-2000

January 20, 2004

Stephen J. Katz
Rankin, Yeldell & Katz
411 South Washington Street
Bastrop, Louisiana 71220

Re: Union Parish School Board

Re: Billed Entity Number: 139313
 471 Application Number: 209497
 Funding Request Number(s): 483189
 Your Correspondence Dated: May 17, 2003

After thorough review and investigation of all relevant facts, the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company ("USAC") has made its decision in regard to your appeal of SLD's Year 1999 Funding Commitment Adjustment for the Application Number indicated above. This letter explains the basis of SLD's decision. The date of this letter begins the 60-day time period for appealing this decision to the Federal Communications Commission ("FCC"). If your letter of appeal included more than one Application Number, please note that for each application for which an appeal is submitted, a separate letter is sent.

Funding Request Number: 483189
Decision on Appeal: **Denied in full**
Explanation:

- You have stated that your appeal will provide clarifying information that corrects the erroneous assumptions made by the Schools and Libraries Division when it adjusted and rescinded funding that was granted to the service providers listed for the above funding request and Union Parish for Funding Year 1999. You stated that there was no error during the initial review process regarding the Form 470 cited, but there was an error in a subsequent review due to insufficient information held by the SLD about Tom Snell and the competitive bidding process undertaken by Union Parish. You stated that by listing Mr. Snell, as the contact person on the Form 470 in no way violated the intent of the bidding process and that the Union Parish Form 470 did not contain any service provider contact information. You further clarified that unlike all of the Master Mind type

cases, Mr. Snell is an employee of the applicant (Union Parish School Board) and not an employee or representative of a service provider (Send Technologies, LLC). You believe that the intent of the bidding process was fully observed and fulfilled in the case of Union Parish and this issue was also part of an appeal filed by Send Technologies, LLC on April 1, 2003. You stated that it is public policy to receive competitive bids in order to protect the taxpaying citizen against contracts of public officials entered into because of favoritism or those involving exorbitant or extortionate prices, but claimed that none of those factors are present in this case. You noted that exhibit 6 clearly demonstrates the contract and charges of Send Technologies, LLC complied with the competitive bidding process and were substantially less than other bidders. You stated that the Union Parish School Board is requesting that the SLD withdraw the issued Commitment Adjustment Letters and overturn the decision to rescind funding for the above requests because the competitive bidding process was fair and open. You close the appeal by stating that the services were provided in a very cost-effective manner and regardless of the service provider, whether it is Send Technologies, LLC or another, the cost would have been identical. You also stated that the services provided within the above funding requests have met all of the public policy objectives that underlay the competitive bidding rules.

- After a thorough review of the appeal and the documentation (audit report from the State of Louisiana Legislative Auditor) which was obtained by the SLD, it was determined that Mr. Tom Snell who is the authorized contact person listed on the cited Form 470 (Application Number: 716920000143248), also has a 15% ownership interest in the selected service provider (Send Technologies, LLC) as listed on the Form 471 application. According to the rules of the Support Mechanism this is considered to be a conflict of interest and is in violation of the competitive bidding guidelines, because the authorized contact person listed on the Form 470 cannot be associated in any way with a service provider because this violates the intent of the bidding process regarding fair and open competition. Based on this determination, the SLD Commitment Adjustment Letter that was issued on April 24, 2003 to the applicant and the related service provider informing them of the commitment adjustment that was performed on this request was properly justified and issued in accordance with the rules of the Support Mechanism.
- Rules of the Support Mechanism require the applicant to provide a fair and open competitive bidding process. Per the SLD website; "In order to be sure that a fair and open competition is achieved, any marketing discussions you hold with service providers must be neutral, so as not to taint the competitive bidding process. That is, you should not have a relationship with a service provider prior to the competitive bidding that would unfairly influence the outcome of a competition or would furnish the service provider with "inside" information or allow them to unfairly compete in any way. A conflict of interest exists, for example, when an applicant's contact person, who is involved in determining the services sought by the applicant and who is involved in the selection of the

applicant's service providers, is associated with a service provider that was selected." Since the applicant's consultant/contact person in this case has been determined to have a 15% ownership interest in the selected service provider from whom the applicant is requesting services, all funding requests that are associated with the cited Form 470 must be denied. Consequently, the appeal is denied.

- Conflict of interest principles that apply in competitive bidding situations include preventing the existence of conflicting roles that could bias a contractor's judgment, and preventing unfair competitive advantage.¹ A competitive bidding violation and conflict of interest exists when an applicant's contact person, who is involved in determining the services sought by the applicant and who is involved in the selection of the applicant's service providers, is associated with a service provider that was selected.
- FCC rules require applicants to seek competitive bids and in selecting a service provider to carefully consider all bids.² FCC rules further require applicants to comply with all applicable state and local competitive bidding requirements.³ In the May 23, 2000 *MasterMind Internet Services, Inc. (MasterMind)* appeal decision, the FCC upheld SLD's decision to deny funding where a MasterMind employee was listed as the contact person on the FCC Form 470 and MasterMind participated in the competitive bidding process initiated by the FCC Form 470.⁴ The FCC reasoned that under those circumstances, the Forms 470 were defective and violated the Commission's competitive bidding requirements, and that in the absence of valid Forms 470, the funding requests were properly denied.⁵ Pursuant to FCC guidance, this principle applies to any service provider contact information on an FCC Form 470 including address, telephone and fax numbers, and email address. Your request for SLD to withdraw the Commitment Adjustment Letter and overturn its decision to rescind funding for these requests is denied.

If you believe there is a basis for further examination of your application, you may file an appeal with the Federal Communications Commission (FCC). You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the above date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site or by

¹ See, e.g., 48 C.F.R. § 9.505(a), (b).

² See 47 C.F.R. §§ 54.504(a), 54.511(a).

³ See 47 C.F.R. § 54.504(a), (b)(2)(vi).

⁴ See *Request for Review by Mastermind Internet Services, Inc., Federal-State Joint Board on Universal Service, Changes to the Board of Directors of National Exchange Carrier Association, Inc.*, CC Docket Nos. 96-45 and 97-21, Order, 16 FCC Rcd 4028 (2000).

⁵ *Id.*

contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience, and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company

cc: Tom Snell
Union Parish School Board
Marian Highway
Farmerville, LA 71241



Administrator's Decision on Appeal - Funding Year 1999-2000

January 20, 2004

**Stephen J. Katz
Rankin, Yeldell & Katz
411 South Washington Street
Bastrop, Louisiana 71220**

Re: Union Parish School Board

Re: Billed Entity Number: 139313
471 Application Number: 121741
Funding Request Number(s): 176108, 176115, 176121, 176128, 176132,
176141, 176227, 176237
Your Correspondence Dated: May 17, 2003

After thorough review and investigation of all relevant facts, the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company ("USAC") has made its decision in regard to your appeal of SLD's Year 1999 Funding Commitment Adjustment for the Application Number indicated above. This letter explains the basis of SLD's decision. The date of this letter begins the 60-day time period for appealing this decision to the Federal Communications Commission ("FCC"). If your letter of appeal included more than one Application Number, please note that for each application for which an appeal is submitted, a separate letter is sent.

Funding Request Number(s): 176108, 176115, 176121, 176128, 176132, 176141,
176227, 176237

Decision on Appeal: Denied in full

Explanation:

- You have stated that your appeal will provide clarifying information that corrects the erroneous assumptions made by the Schools and Libraries Division when it adjusted and rescinded funding that was granted to the service providers listed for the above funding requests and Union Parish for Funding Year 1999. You stated that there was no error during the initial review process regarding the Form 470 cited, but there was an error in a subsequent review due to insufficient information held by the SLD about Tom Snell and the competitive bidding process undertaken by Union Parish. You stated that by listing Mr. Snell as the contact person on the Form 470 in no way violated the intent of the bidding

process and that the Union Parish Form 470 did not contain any service provider contact information. You further clarified that unlike all of the Master Mind type cases, Mr. Snell is an employee of the applicant (Union Parish School Board) and not an employee or representative of a service provider (Send Technologies, LLC). You believe that the intent of the bidding process was fully observed and fulfilled in the case of Union Parish and this issue was also part of an appeal filed by Send Technologies, LLC on April 1, 2003. You stated that it is public policy to receive competitive bids, where applicable, in order to protect the taxpaying citizen against contracts of public officials entered into because of favoritism or those involving exorbitant or extortionate prices and none of those factors are present in this case. You noted that exhibit 6 clearly demonstrates the contract and charges of Send Technologies, LLC complied with the competitive bidding process and were substantially less than other bidders. You stated that the Union Parish School Board is requesting that the SLD withdraw the issued Commitment Adjustment Letters and overturn the decision to rescind funding for the above requests because the competitive bidding process was fair and open. You close the appeal by stating that the services were provided in a very cost-effective manner, regardless of the service provider, whether it is Send Technologies, LLC or another, the cost would have been identical. You also stated that the services provided within the above funding requests have met all of the public policy objectives that underlay the competitive bidding rules.

- After a thorough review of the appeal and the documentation (audit report from the State of Louisiana Legislative Auditor), which was obtained by the SLD, it was determined that Mr. Tom Snell who is the authorized contact person listed on the cited Form 470 (Application Number: 716920000143248), also has a 15% ownership interest in the selected service provider, Send Technologies, LLC, as listed on the Form 471 application. According to the rules of the Support Mechanism this is considered to be a conflict of interest and is in violation of the competitive bidding guidelines, as the authorized contact person listed on the Form 470 cannot be associated in any way with a service provider because this violates the intent of the bidding process regarding fair and open competition. Based on this determination, the SLD Commitment Adjustment Letters that were issued on April 24, 2003 to the applicant and the related service providers were properly justified and issued in accordance with the rules of the Support Mechanism.
- Rules of the Support Mechanism require the applicant to provide a fair and open competitive bidding process. Per the SLD website; "In order to be sure that a fair and open competition is achieved, any marketing discussions you hold with service providers must be neutral, so as not to taint the competitive bidding process. That is, you should not have a relationship with a service provider prior to the competitive bidding that would unfairly influence the outcome of a competition or would furnish the service provider with "inside" information or allow them to unfairly compete in any way. A conflict of interest exists, for example, when an applicant's contact person, who is involved in determining the

services sought by the applicant and who is involved in the selection of the applicant's service providers, is associated with a service provider that was selected." Since the applicant's contact person in this case has been determined to have a 15% ownership interest in the selected service provider from whom the applicant is requesting services, all funding requests that are associated with the cited Form 470 must be denied. Consequently, the appeal is denied.

- Conflict of interest principles that apply in competitive bidding situations include preventing the existence of conflicting roles that could bias a contractor's judgment, and preventing unfair competitive advantage.¹ A competitive bidding violation and conflict of interest exists when an applicant's contact person, who is involved in determining the services sought by the applicant and who is involved in the selection of the applicant's service providers, is associated with a service provider that was selected.
- FCC rules require applicants to seek competitive bids and in selecting a service provider to carefully consider all bids.² FCC rules further require applicants to comply with all applicable state and local competitive bidding requirements.³ In the May 23, 2000 *MasterMind Internet Services, Inc. (MasterMind)* appeal decision, the FCC upheld SLD's decision to deny funding where a MasterMind employee was listed as the contact person on the FCC Form 470 and MasterMind participated in the competitive bidding process initiated by the FCC Form 470.⁴ The FCC reasoned that under those circumstances, the Forms 470 were defective and violated the Commission's competitive bidding requirements, and that in the absence of valid Forms 470, the funding requests were properly denied.⁵ Pursuant to FCC guidance, this principle applies to any service provider contact information on an FCC Form 470 including address, telephone and fax numbers, and email address. Your request for SLD to withdraw the Commitment Adjustment Letter and overturn its decision to rescind funding for these requests is denied.

If you believe there is a basis for further examination of your application, you may file an appeal with the Federal Communications Commission (FCC). You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be **POSTMARKED** within 60 days of the above date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th

¹ See, e.g., 48 C.F.R. § 9.505(a), (b).

² See 47 C.F.R. §§ 54.504(a), 54.511(a).

³ See 47 C.F.R. § 54.504(a), (b)(2)(vi).

⁴ See *Request for Review by Mastermind Internet Services, Inc., Federal-State Joint Board on Universal Service, Changes to the Board of Directors of National Exchange Carrier Association, Inc.*, CC Docket Nos. 96-45 and 97-21, Order, 16 FCC Rcd 4028 (2000).

⁵ *Id.*

Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site or by contacting the Client Service Bureau. We strongly recommend that you use either the e-mail or fax filing options.

We thank you for your continued support, patience, and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company

cc: Tom Snell
Union Parish School Board
Marian Highway
Farmerville, LA 71241



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal - Funding Year 2000-2001

January 20, 2004

Stephen J. Katz
Rankin, Yeldell & Katz
411 South Washington Street
Bastrop, Louisiana 71220

Re: Union Parish School Board

Re: Billed Entity Number: 139313
 471 Application Number: 163210
 Funding Request Number(s): 405275, 405449
 Your Correspondence Dated: May 17, 2003

After thorough review and investigation of all relevant facts, the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company ("USAC") has made its decision in regard to your appeal of SLD's Year 2000 Funding Commitment Adjustment for the Application Number indicated above. This letter explains the basis of SLD's decision. The date of this letter begins the 60-day time period for appealing this decision to the Federal Communications Commission ("FCC"). If your letter of appeal included more than one Application Number, please note that for each application for which an appeal is submitted, a separate letter is sent.

Funding Request Number(s): 405275, 405449
Decision on Appeal: **Denied in full**
Explanation:

- You have stated that the appeal will provide clarifying information that corrects the erroneous assumptions made by the Schools and Libraries Division when it adjusted and rescinded funding that was granted to the service providers listed for the above funding requests and Union Parish for Funding Year 2000. You stated that there was no error during the initial review process regarding the Form 470 cited, but there was an error in a subsequent review due to insufficient information held by the SLD about Tom Snell and the competitive bidding process undertaken by Union Parish. You stated that listing Mr. Snell as the contact person on the Form 470 in no way violated the intent of the bidding process and that the Union Parish Form 470 did not contain any service provider contact information. You stated that unlike all of the MasterMind type cases, Mr.

Snell is an employee of the applicant (Union Parish School Board) and not an employee or representative of a service provider (Send Technologies, LLC). You believe that the intent of the bidding process was fully observed and fulfilled in the case of Union Parish and this issue was also part of an appeal filed by Send Technologies, LLC on April 1, 2003. You stated that it is public policy to receive competitive bids in order to protect the taxpaying citizen against contracts of public officials entered into because of favoritism or those involving exorbitant or extortionate prices, but claimed that none of those factors are present in this case. You stated that exhibit 6 clearly demonstrates the contract and charges of Send Technologies, LLC complied with the competitive bidding process and were substantially less than other bidders. You stated that the Union Parish School Board is requesting that the SLD withdraw the issued Commitment Adjustment Letter and overturn the decision to rescind funding for the above requests because the competitive bidding process was fair and open. You close the appeal by stating that the services were provided in a very cost-effective manner and regardless of the service provider, whether it be Send Technologies, LLC or another, the cost would have been identical. You also stated that the services provided within the above funding requests have met all of the public policy objectives that underlay the competitive bidding rules.

- After a thorough review of the appeal and the documentation (audit report from the State of Louisiana Legislative Auditor), which was obtained by the SLD, it was determined that Mr. Tom Snell, who is the authorized contact person listed on the cited Form 470 (Application Number: 482150000255298), also has a 15% ownership interest in the selected service provider, Send Technologies, LLC, as listed on the Form 471 application. According to the rules of the Schools and Libraries Program Support Mechanism, this is considered to be a conflict of interest and is in violation of the competitive bidding guidelines because the authorized contact person listed on the Form 470 cannot be associated in any way with a service provider because this violates the intent of the bidding process regarding fair and open competition. Based on this determination, the SLD Commitment Adjustment Letter that was issued on April 24, 2003, to the applicant and the related service providers informing them of the commitment adjustment that was made to this request was properly justified and was issued in accordance with the rules of the Schools and Libraries Program Support Mechanism.
- Rules of the Schools and Libraries Program Support Mechanism require the applicant to provide a fair and open competitive bidding process. Per the SLD website, "In order to be sure that a fair and open competition is achieved, any marketing discussions you hold with service providers must be neutral, so as not to taint the competitive bidding process. That is, you should not have a relationship with a service provider prior to the competitive bidding that would unfairly influence the outcome of a competition or would furnish the service provider with "inside" information or allow them to compete unfairly in any way. A conflict of interest exists, for example, when an applicant's contact person, who

is involved in determining the services sought by the applicant and who is involved in the selection of the applicant's service providers, is associated with a service provider that was selected." Since the applicant's consultant/contact person in this case has been determined to have a 15% ownership interest in the selected service provider from whom the applicant is requesting services, all funding requests that are associated with the cited Form 470 must be denied. Consequently, the appeal is denied.

- Conflict of interest principles that apply in competitive bidding situations include preventing the existence of conflicting roles that could bias a contractor's judgment, and preventing unfair competitive advantage.¹ A competitive bidding violation and conflict of interest exist when an applicant's contact person, who is involved in determining the services sought by the applicant and who is involved in the selection of the applicant's service providers, is associated with a service provider that was selected.
- FCC rules require applicants to seek competitive bids and in selecting a service provider to carefully consider all bids.² FCC rules further require applicants to comply with all applicable state and local competitive bidding requirements.³ In the May 23, 2000 *MasterMind Internet Services, Inc. (MasterMind)* appeal decision, the FCC upheld SLD's decision to deny funding where a MasterMind employee was listed as the contact person on the FCC Form 470 and MasterMind participated in the competitive bidding process initiated by the FCC Form 470.⁴ The FCC reasoned that under those circumstances, the Forms 470 were defective and violated the Commission's competitive bidding requirements, and that in the absence of valid Forms 470, the funding requests were properly denied.⁵ Pursuant to FCC guidance, this principle applies to any service provider contact information on an FCC Form 470 including address, telephone, and fax numbers, and email address. Your request for SLD to withdraw the Commitment Adjustment Letter and overturn its decision to rescind funding for these requests is denied.

If you believe there is a basis for further examination of your application, you may file an appeal with the Federal Communications Commission (FCC). You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be **POSTMARKED** within 60 days of the above date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th

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Schools and Libraries Division
Universal Service Administrative Company

cc: Tom Snell
Union Parish School Board
Marian Highway
Farmerville, LA 71241



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal - Funding Year 2000-2001

January 20, 2004

Stephen J. Katz
Rankin, Yeldell & Katz
411 South Washington Street
Bastrop, Louisiana 71220

Re: Union Parish School Board

Re: Billed Entity Number: 139313
 471 Application Number: 160965
 Funding Request Number(s): 385749, 385761, 405626, 405655
 Your Correspondence Dated: May 17, 2003

After thorough review and investigation of all relevant facts, the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company ("USAC") has made its decision in regard to your appeal of SLD's Year 2000 Funding Commitment Adjustment for the Application Number indicated above. This letter explains the basis of SLD's decision. The date of this letter begins the 60-day time period for appealing this decision to the Federal Communications Commission ("FCC"). If your letter of appeal included more than one Application Number, please note that for each application for which an appeal is submitted, a separate letter is sent.

Funding Request Number(s): 385749, 385761, 405626, 405655
Decision on Appeal: **Denied in full**
Explanation:

- You have stated that your appeal will provide clarifying information that corrects the erroneous assumptions made by the Schools and Libraries Division when it adjusted and rescinded funding that was granted to the service providers listed for the above funding requests and Union Parish for Funding Year 2000. You stated that there was no error during the initial review process regarding the Form 470 cited, but there was an error in a subsequent review due to insufficient information held by the SLD about Tom Snell and the competitive bidding process undertaken by Union Parish. You stated that by listing Mr. Snell as the contact person on the Form 470 in no way violated the intent of the bidding process, and that the Union Parish Form 470 did not contain any service provider contact information. You further clarified that unlike all of the Master Mind type

cases, Mr. Snell is an employee of the applicant (Union Parish School Board) and not an employee or representative of a service provider (Send Technologies, LLC). You believe that the intent of the bidding process was fully observed and fulfilled in the case of Union Parish and this issue was also part of an appeal filed by Send Technologies, LLC on April 1, 2003. You stated that it is public policy to receive competitive bids in order to protect the taxpaying citizen against contracts of public officials entered into because of favoritism or those involving exorbitant or extortionate prices, but claimed that none of those factors are present in this case. You noted that exhibit 6 clearly demonstrates the contract and charges of Send Technologies, LLC complied with the competitive bidding process and were substantially less than other bidders. You stated that the Union Parish School Board is requesting that the SLD withdraw the issued Commitment Adjustment Letters and overturn the decision to rescind funding for the above requests because the competitive bidding process was fair and open. You close the appeal by stating that the services were provided at in very cost-effective manner and regardless of the service provider, whether it is Send Technologies, LLC or another, the cost would have been identical. You also stated that the services provided within the above funding requests have met all of the public policy objectives that underlay the competitive bidding rules.

- After a thorough review of the appeal and the documentation (audit report from the State of Louisiana Legislative Auditor) which was obtained by the SLD, it was determined that Mr. Tom Snell who is the authorized contact person listed on the cited Form 470 (Application Number: 482150000255298), also has a 15% ownership interest in the selected service provider (Send Technologies, LLC) as listed on the Form 471 application. According to the rules of the Support Mechanism this is considered to be a conflict of interest and is in violation of the competitive bidding guidelines, because the authorized contact person listed on the Form 470 cannot be associated in any way with a service provider because this violates the intent of the bidding process regarding fair and open competition. Based on this determination, the SLD Commitment Adjustment Letters that were issued on April 24, 2003 to the applicant and the related service providers informing them of the commitment adjustment that was performed on this request was properly justified and were issued in accordance with the rules of the Support Mechanism.
- Rules of the Support Mechanism require the applicant to provide a fair and open competitive bidding process. Per the SLD website; "In order to be sure that a fair and open competition is achieved, any marketing discussions you hold with service providers must be neutral, so as not to taint the competitive bidding process. That is, you should not have a relationship with a service provider prior to the competitive bidding that would unfairly influence the outcome of a competition or would furnish the service provider with "inside" information or allow them to unfairly compete in any way. A conflict of interest exists, for example, when an applicant's contact person, who is involved in determining the services sought by the applicant and who is involved in the selection of the

applicant's service providers, is associated with a service provider that was selected." Since the applicant's consultant/contact person in this case has been determined to have a 15% ownership interest in the selected service provider from whom the applicant is requesting services, all funding requests that are associated with the cited Form 470 must be denied. Consequently, the appeal is denied.

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⁵ *Id.*

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We thank you for your continued support, patience, and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company

cc: Tom Snell
Union Parish School Board
Marian Highway
Farmerville, LA 71241

cc: Lisa Spooner Foshee
BellSouth Corporation, Legal Department
675 West Peachtree Street, N.W.
Suite 4300
Atlanta, GA 30375-0001



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal - Funding Year 2001-2002

January 20, 2004

Stephen J. Katz
Rankin, Yeldell & Katz
411 South Washington Street
Bastrop, Louisiana 71220

Re: Union Parish School Board

Re: Billed Entity Number: 139313
 471 Application Number: 229706
 Funding Request Number(s): 594001, 594023, 594092, 594323, 618168
 Your Correspondence Dated: May 17, 2003

After thorough review and investigation of all relevant facts, the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company ("USAC") has made its decision in regard to your appeal of SLD's Year 2001 Funding Commitment Adjustment for the Application Number indicated above. This letter explains the basis of SLD's decision. The date of this letter begins the 60-day time period for appealing this decision to the Federal Communications Commission ("FCC"). If your letter of appeal included more than one Application Number, please note that for each application for which an appeal is submitted, a separate letter is sent.

Funding Request Number(s): 594001, 594023, 594092, 594323, 618168
Decision on Appeal: **Denied in full**
Explanation:

- You have stated that your appeal will provide clarifying information that corrects the erroneous assumptions made by the Schools and Libraries Division when it adjusted and rescinded funding that was granted to the service providers listed for the above funding requests and Union Parish for Funding Year 2001. You stated that there was no error during the initial review process regarding the Form 470 cited, but there was an error in a subsequent review due to insufficient information held by the SLD about Tom Snell and the competitive bidding process undertaken by Union Parish. You stated that listing Mr. Snell as the contact person on the Form 470 in no way violated the intent of the bidding process and that the Union Parish Form 470 did not contain any service provider

contact information. You further clarified that unlike all of the MasterMind type cases, Mr. Snell is an employee of the applicant (Union Parish School Board) and not an employee or representative of a service provider (Send Technologies, LLC). You believe that the intent of the bidding process was fully observed and fulfilled in the case of Union Parish and this issue was also part of an appeal filed by Send Technologies, LLC on April 1, 2003. You stated that it is public policy to receive competitive bids in order to protect the taxpaying citizen against contracts of public officials entered into because of favoritism or those involving exorbitant or extortionate prices, but claimed that none of these factors were present in this case. You stated that the Union Parish School Board is requesting that the SLD withdraw the issued Commitment Adjustment Letters and overturn the decision to rescind funding for the above requests because the competitive bidding process was fair and open. You close the appeal by stating that the services were provided in a very cost-effective manner and regardless of the service provider, whether it was Send Technologies, LLC or another, the cost would have been identical. You also stated that the services provided within the above funding requests have met all of the public policy objectives that underlay the competitive bidding rules.

- After a thorough review of the appeal and review the documentation (audit report from the State of Louisiana Legislative Auditor), which was obtained by the SLD, it was determined that Mr. Tom Snell who is the authorized contact person listed on the cited Form 470 (Application Number: 482150000255298), also has a 15% ownership interest in the selected service provider (Send Technologies, LLC) as listed on the Form 471 application. According to the rules of the Support Mechanism, this is considered to be a conflict of interest and is in violation of the competitive bidding guidelines. The authorized contact person listed on the Form 470 cannot be associated in any way with a service provider because this violates the intent of the bidding process regarding fair and open competition. Based on this determination, the SLD Commitment Adjustment Letters that were issued on April 24, 2003 to the applicant and the related service providers were properly justified and were issued in accordance with the rules of the Support Mechanism.
- FCC rules require the applicant to provide a fair and open competitive bidding process. Per the SLD website; "In order to be sure that a fair and open competition is achieved, any marketing discussions you hold with service providers must be neutral, so as not to taint the competitive bidding process. That is, you should not have a relationship with a service provider prior to the competitive bidding that would unfairly influence the outcome of a competition or would furnish the service provider with "inside" information or allow them to unfairly compete in any way. A conflict of interest exists, for example, when an applicant's contact person, who is involved in determining the services sought by the applicant and who is involved in the selection of the applicant's service providers, is associated with a service provider that was selected." Since the applicant's contact person in this case has been determined to have a 15% ownership interest in the selected service provider from whom the applicant is

requesting services, all funding requests that are associated with the cited Form 470 must be denied. Consequently, the appeal is denied.

- Conflict of interest principles that apply in competitive bidding situations include preventing the existence of conflicting roles that could bias a contractor's judgment, and preventing unfair competitive advantage.¹ A competitive bidding violation and conflict of interest exists when an applicant's contact person, who is involved in determining the services sought by the applicant and who is involved in the selection of the applicant's service providers, is associated with a service provider that was selected.
- FCC rules require applicants to seek competitive bids and in selecting a service provider to carefully consider all bids.² FCC rules further require applicants to comply with all applicable state and local competitive bidding requirements.³ In the May 23, 2000 *MasterMind Internet Services, Inc. (MasterMind)* appeal decision, the FCC upheld SLD's decision to deny funding where a MasterMind employee was listed as the contact person on the FCC Form 470 and MasterMind participated in the competitive bidding process initiated by the FCC Form 470.⁴ The FCC reasoned that under those circumstances, the Forms 470 were defective and violated the Commission's competitive bidding requirements, and that in the absence of valid Forms 470, the funding requests were properly denied.⁵ Pursuant to FCC guidance, this principle applies to any service provider contact information on an FCC Form 470 including address, telephone and fax numbers, and email address. Your request for SLD to withdraw the Commitment Adjustment Letter and overturn its decision to rescind funding for these requests is denied.

If you believe there is a basis for further examination of your application, you may file an appeal with the Federal Communications Commission (FCC). You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the above date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

¹ See, e.g., 48 C.F.R. § 9.505(a), (b).

² See 47 C.F.R. §§ 54.504(a), 54.511(a).

³ See 47 C.F.R. § 54.504(a), (b)(2)(vi).

⁴ See *Request for Review by Mastermind Internet Services, Inc., Federal-State Joint Board on Universal Service, Changes to the Board of Directors of National Exchange Carrier Association, Inc.*, CC Docket Nos. 96-45 and 97-21, Order, 16 FCC Rcd 4028 (2000).

⁵ *Id.*

We thank you for your continued support, patience, and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company

cc: Tom Snell
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Farmerville, LA 71241

cc: Lisa Spooner Foshee
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EXHIBIT 2

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May 17, 2003

LETTER OF APPEAL

Via Facsimile (973) 599-6542

Letter of Appeal
Schools and Libraries Division
Box 125 - Correspondence Unit
80 South Jefferson Road
Whippany, NJ 07981

Dear Administrator:

Please consider this letter and exhibits as the consolidated Appeal of Union Parish School Board relating to five Commitment Adjustment Letters ("CALs") (*Exhibits 1 - 5*) issued on April 24, 2003, by the Schools and Libraries Division of the Universal Service Administrative Company ("SLD"). This Appeal is consolidated because the stated basis of adjustment in each CAL is identical:

After thorough investigation, it has been determined that Tom Snell is associated with Send Technology, LLC, a service provider. Tom Snell is also the contact person on the Form 470 . . . that is referenced for this funding request. The Form 470 associated with this funding request contains service provider (SP) contact information, which violates the intent of the competitive bidding process. Competitive bidding violations occur when a SP associated with the Form 470 participates in competitive bidding process as a bidder. As a result of the competitive bidding violation the SLD is rescinding the committed amount in full.¹

A. The Commitment Adjustment Letters: Each CAL, issued on April 24, 2003, relates to applicant Union Parish School Board ("Union Parish"). Additional detail about the SLD actions that are subject of this consolidated Appeal follow:

¹CALs at 4.

1. Funding Year: 1999-2000
Form 471 Application Number: 209497
FRN: 483189
2. Funding Year: 1999-2000
Form 471 Application Number: 121741
FRN: 176108; 176115; 176121; 176128; 176132; 176141;
176227 and 176237
3. Funding Year: 2000-2001
Form 471 Application Number: 160965
FRN: 385749; 385761; 405626 and 405655
4. Funding Year: 2000-2001
Form 471 Application Number: 163210
FRN: 405275 and 405449
5. Funding Year: 2001-2002
Form 471 Application Number: 229706
FRN: 594001; 594023; 594092; 594323 and 618168

B. Contact Information: Please direct all inquiries regarding this consolidated Appeal to:

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Rankin, Yeldell & Katz
(A Professional Law Corporation)
Counsel for Union Parish School Board
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C. Basis for Appeal

This Appeal provides clarifying information that corrects erroneous assumptions made by the Schools and Libraries Division ("SLD") when it adjusted and rescinded funding granted to the service providers in the above referenced FRNs and Union Parish for the previously referenced funding years. The SLD made no error in its initial review of Union Parish's Form 470, but there was an error in a subsequent review of the application due to insufficient information held by the SLD about Tom Snell ("Snell") and the competitive bidding process undertaken by Union Parish. This appeal will

provide information to correct the erroneous assumptions held by the SLD that in listing Snell as the contact person, Union Parish's Form 470 contained service provider contact information which violated the intent of the competitive bidding process. Union Parish's Form 470 did not contain service provider contact information. Unlike all of the other *Master-Mind*-type cases, Snell is an employee of the applicant, Union Parish; Snell is not an employee or representative of any service provider, much less those listed in the above FRNs. In addition, as this appeal will demonstrate, the intent of the competitive bidding process was fully observed and fulfilled in the case of Union Parish. The like issue was part of the appeal filed by Send Technologies, L.L.C. on April 1, 2003. That is attached as *Exhibit 6*. It is incorporated herein because it adequately discusses the basis for this appeal on that basis as well.

It is the public policy to receive competitive bids, where applicable, in order to protect the taxpaying citizen against contracts of public officials entered into because of favoritism or those involving exorbitant or extortionate prices. None of those factors are present here. As *Exhibit 6* fully demonstrates, the contract and charges of Send Technologies, L.L.C. complied with competitive bidding and were substantially less than other competitive bidders.

Moreover, the local Telcomm Services provided for all the above FRNs were provided by BellSouth Telecommunications, Inc. or CenturyTel of Central Louisiana, Inc. They are the local service providers in Union Parish. CenturyTel provides local telephone service for the schools located in Marion, Louisiana; Linville, Louisiana and Rocky Branch, Louisiana. BellSouth provides local service for all other schools and the central office and other administrative facilities of the Union Parish School Board. The funds paid to BellSouth and CenturyTel for the local service had to be paid regardless of which entity was a successful bidder as service provider. Whether Send Technologies, L.L.C. was the service provider or whether any other person or entity was the service provider, the identical funds would have been expended for these local Telcomm Services. The same is true for the Telcomm Services provided by AT&T Corp. It has been for years and currently remains the Union Parish School Board long distance service provider. There was no change at the time of the award to Send Technologies, L.L.C. and all charges that were paid to AT&T Corp. would have been paid to it regardless of the service provider. Smaller payments for Telcomm Services were made to Metrolcall, Inc. for pager services and to CenturyTel Wireless, Inc. for cellular. Those services would have been identical whether or not Send Technologies, L.L.C. was a service provider, for the same reasons.

The service provider for application number 121741 for internal connections was Global Data Systems, Inc. for the most part. In Application Number 163210, FRN: 45275 had a service provider for internal connections of Dell Marketing L.P. and FRN: 405449 had as the service provider for internal connections Anixter, Inc. Anixter, Dell and Global all provided internal connection services at or below market price. There is

no allegation that the funds paid to or for internal connections were excessive. They were not. Those internal connection charges would have been incurred at the same level at the same sites and schools and for the same price whether Send Technologies, L.L.C. was the service provider or not. All of the services have been in the past and continue to be performed. There is no question as to that issue. There is no question as to the reasonableness of the price for the local Telcomm Services; furthermore there is no choice as to service provider. All service providers were experienced, performed well and at a market or below price. The process utilized to choose those providers is not questioned nor is the provider's service or cost. According, the public interest served by the Commission's bidding rules was not violated nor was harm caused to any party.

D. Summary

The Union Parish School Board is requesting that the SLD withdraw the aforementioned CALs and overturn the decision to rescind funding. For the reasons stated herein and in the attachments, the Union Parish School Board's competitive bidding process was fair and open. The services were provided at a very cost-effective manner and in many situations, and in the case of Telcomm Service, regardless of the provider, whether it be Send Technologies, L.L.C. or another, the service provider and the cost would have been identical.

The services provided to the Union Parish School Board have met all the public policy objectives that underlay the competitive bidding rules.

Sincerely,

Rankin, Yeldell & Katz
(A Professional Law Corporation)

By: 

Stephen J Katz

Counsel for Union Parish School Board

SJK/mt

Attachments: Exhibits 1 - 6

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TO: Administrator - SLD Letter of Appeal

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DATE: May 17, 2003

PAGES:

	<u>4</u>	Pages Letter of Appeal
+	<u>66</u>	Pages Attachments to Letter of Appeal
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